



## **HOUSING CASE ACCEPTANCE GUIDELINES**

**August 2010**

### **I. General Considerations Applying to All Cases Considered for Full Representation**

A. The regional office will weigh the following factors in determining whether to accept a case:

1. The legal and factual merits, including the client's credibility and whether there is a good faith basis to seek extension, modification, or reversal of existing law which is unfavorable to the client's position. Non-meritorious cases will not be considered for representation;
2. The existing caseload of the advocate and, where transfer of the case to another program advocate is an option, the caseloads of other advocates taking cases in the substantive area;
3. The availability of alternative assistance or representation for the client;
4. The willingness of the client to cooperate with the advocate;
5. The difficulty of preparing the case given the program's resources;
6. The effect on the client if the program does not assist or represent the client;
7. The ability of the client to represent him/herself;
8. The affect on the client community of a decision to, or not to, assist or represent the client, including the possibility of systemic relief;
9. Abusive or egregious conduct by the landlord, such as retaliatory eviction or severely dilapidated conditions, particularly if the abuse affects other tenants;

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10. The effect of an eviction given governing rent control ordinances; or

11. Any other program or policy reasons for accepting or declining a case.

B. Where possible, the decision to accept a case for representation will be made at a case review meeting.

**II. Prerequisites for Case Acceptance (See also, Protocols for Assistance Short of Full Representation, adopted 11/27/06)**

A. The Client has a meritorious case; and

B. The Client wants to preserve his or her housing or housing benefit, or has a case involving important housing rights whose resolution will affect more than just the client.

C. In cases involving an unlawful detainer, the Client must have all of the back rent due and must be willing to pay this sum, and any rent due during the pendency of the action, into the BayLegal trust account. (This requirement may be waived only in extraordinary circumstances with the approval of the advocate's supervising attorney.)

**III. Program-Wide Housing Priorities:**

A. **Preserving Affordable Housing** by prioritizing cases involving

1. Public and Subsidized (including tax credit) Housing
2. Mobile Home Housing
3. Rent-Controlled Housing
4. In general, cases involving saving an existing tenancy or benefit will have precedence over cases involving other issues

B. **Fighting Housing Discrimination**

**IV. Case Acceptance Guidelines (When an Appointment for Possible Full Representation Can be Made)**

A. **Conventional Public Housing**

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<b>PUBLIC HOUSING</b>	<b>Alameda:</b>	<b>Santa Clara</b>	<b>Contra Costa</b>	<b>San Francisco</b>
<b>EVICCTIONS: NOTICE ONLY</b>	<b>YES</b> – office wants to monitor PHA grievance procedures in AC County	<b>NO</b> (unless Fair Hsg; protocols to be established) 1. Advise clients to pay rent and/or take other appropriate action (e.g., file grievance). 2. STEALTH if client may not be able to implement the advice given because of disability or LEP *CCC - yes *SF – Yes schedule even where incurable nuisance		
<b>EVICCTIONS: COURT PAPERS RECEIVED &amp; NO DEFAULT ENTERED</b>	<b>YES – Make Appointment</b>			<b>NO: ALTERNATIVE RESOURCES AVAILABLE;</b> Refer to EDC
<b>DEFAULT EVICTION: STAYS OF EXECUTION</b>	<b>YES–Make Appointment</b>	<b>NO. Make appt for <u>BRIEF SERVICE</u> only (Stays of Execution)</b> 1. Resources permitting, office may consider pro per Motion to Vacate Default 2. Resources permitting, office may consider representing in a meritorious case *CCC – yes		<b>NO: ALTERNATIVE RESOURCES AVAILABLE;</b> Refer to EDC
<b>DEFAULT EVICTION: MOTION TO SET ASIDE</b>	<b>*YES – Appointment ONLY for Stay of Execution</b> 1. Local office will assess merit of Motion to Set Aside 2. If client unwilling to get a stay – refer to other agencies	<b>NO. Make appt for <u>BRIEF SERVICE</u> only (Stays of Execution)</b> 1. Resources permitting, office may consider pro per Motion to Vacate Default 2. Resources permitting, office may consider representing in a meritorious case *CCC – in possession and 7+ days b4 stay expires; underlying meritorious case; LEP or Disabled or misled by LL which caused default; if out of possession then compelling fact (severe disability and valid underlying case)		<b>NO, not even for brief service: ALTERNATIVE RESOURCES AVAILABLE;</b> Refer to HAP and Access Center; JFK clinic 510.647.2060

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DEFAULT EVICTION: MOTION FOR RELIEF FROM FORFEITURE	<b>*YES – Appointment ONLY for Stay of Execution</b> 1. Local office will assess merit of Motion for Relief from Forfeiture 2. If client unwilling to get a stay – refer to other agencies	<b>NO. Make appt for <u>BRIEF SERVICE</u> only (Stays of Execution)</b> 1. Resources permitting, office may consider pro per Motion to Vacate Default and/or Motion for Relief from Forfeiture 2. Resources permitting, office may consider representing in a meritorious case *CCC - yes	<b>NO, not even for brief service: ALTERNATIVE RESOURCES AVAILABLE;</b> Refer to HAP; JFK clinic 510.647.2060	
DEFAULT EVICTION: AFTER STIPULATION	<b>NO</b> (Treat like any other default eviction, e.g., refer for stay of execution only)  <b>UNLESS <u>BayLegal</u> negotiated the stipulation, in which case, Make appointment</b>			
ONE STRIKE CASES	<b>YES. Make appointment</b>			
PUBLIC HOUSING NOTICES/GRIEVANCE NOT INVOLVING EVICTION	<b>YES. Make appt if issue involves:</b> 1. transfer for safety reasons (e.g., DV; tenant-on-tenant victimization; crime and drugs by other tenants), or 2. or reasonable accommodation for tenant with disabilities Note: other issues may be STEALTHED  *SF – any rent related public housing issue should be referred to 415-354-6353 (baylegal SF public housing hotline)			

**B. Subsidized Housing (including Tax Credit Properties):**

<b>SUBSIDIZED HOUSING</b>	Alameda	Santa Clara	Contra Costa	San Francisco
<b>EVICTIONS: NOTICE ONLY</b>	<b>YES– But only if <u>pre-eviction grievance procedure</u> specified in Notice of Termination OR if Reasonable Accommodation Issue Present -</b> <b>No Tax Credit cases at this stage</b>	<b>NO</b> (unless Fair Hsg; protocols to be established) 1. Advise client to pay rent or take other appropriate action (e.g., request grievance, informal meeting, or informal hearing) 2. STEALTH if client may not be able to implement the advice given because of disability or LEP  *CCC – yes SF - yes		

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<b>EVICTIONS: COURT PAPERS RECEIVED</b>	<b>YES. Make appointment</b>		<b>NO</b> ALTERNATIVE RESOURCES AVAILABLE. Refer to EDC
<b>DEFAULT EVICTION: STAYS OF EXECUTION</b>	<b>YES –Make Appointment</b>	<b>NO. Make appt for <u>BRIEF SERVICE</u> only (Stays of Execution)</b> 1. Resources permitting, office may consider pro per Motion to Vacate Default 2. Resources permitting, office may consider representing in a meritorious case *CCC – yes	<b>NO: ALTERNATIVE RESOURCES AVAILABLE;</b> Refer to EDC
<b>DEFAULT EVICTION: MOTION TO SET ASIDE</b>	<b>YES – Appointment ONLY for Stay of Execution</b> 1. Local office will assess for merit of Motion to Set Aside 2. If client unwilling to get a stay – refer to other agencies	<b>NO. Make appt for <u>BRIEF SERVICE</u> only (Stays of Execution)</b> 1. Resources permitting, office may consider pro per Motion to Vacate Default 2. Resources permitting, office may consider representing in a meritorious case *CCC – in possession and 7+ days b4 stay expires; underlying meritorious case; LEP or Disabled or misled by LL which caused default; if out of possession then compelling fact (severe disability and valid underlying case)	<b>NO, not even for brief service: ALTERNATIVE RESOURCES AVAILABLE</b> Refer to HAP and Access Center; ok to refer to JFK clinic 510.647.2060
<b>DEFAULT EVICTION: MOTION FOR RELIEF FROM FORFEITURE</b>	<b>YES – Appointment ONLY for Stay of Execution</b> 1. Local office will assess for merit of Motion for Relief from Forfeiture 2. If client unwilling to get a stay – refer to other agencies	<b>NO. Make appt for <u>BRIEF SERVICE</u> only (Stays of Execution)</b> 1. Resources permitting, office may consider pro per Motion to Vacate Default and/or Motion for Relief from Forfeiture 2. Resources permitting, office may consider representing in a meritorious case *CCC – yes	<b>NO, not even for brief service: ALTERNATIVE RESOURCES AVAILABLE;</b> Refer to HAP; JFK clinic 510.647.2060
<b>DEFAULT EVICTION: AFTER STIPULATION</b>	<b>NO</b> (Treat like any other default eviction, e.g., refer for stay of execution only)  <b>UNLESS <u>BavLegal</u> negotiated the stipulation, in which case, Make appointment</b>		
<b>DISPUTES OVER DAMAGES:</b>	<b>NO, UNLESS ISSUE ENDANGERS SUBSIDY</b>		

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TERMINATION OR NOTICE OF TERMINATION*	YES. Make appointment	
WRIT APPEAL OF VOUCHER TERMINATION	YES. Make appt if less than 60 days after date of the termination decision [Note 60 days allows review of decision before 90 day statute of limitation runs] STEALTH if more than 60 days after date of termination decision	
CHANGE IN RENT DUE TO CHANGE IN INCOME	<p>YES – Schedule ONLY if ALL of the following apply:</p> <p>1. cl has received a written notice of rent increase from PHA</p> <p>2. rent increase is substantial (e.g. 10% or more)</p> <p>3. CI has requested an informal hearing yet has not obtained resolution of issue</p> <p>For all other cases:</p> <p>advise of appropriate remedies (e.g., grievance, informal meeting, informal hearing), and STEALTH if client may not be able to implement the advice given because of disability or LEP</p>	<p>YES. Make appt if rent increase is substantial (e.g., 10% or more) If increase is not substantial, advise of appropriate remedies (e.g., grievance, informal meeting, informal hearing), and STEALTH if client may not be able to implement the advice given because of disability or LEP or the rent increase seems otherwise fishy</p>
ONE STRIKE CASES	YES. Make appointment	
PRESERVATION OF PROJECT-BASED SUBSIDIZED HOUSING	YES. Make appointment	

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**C. Evictions from Private Housing:**

<b>PRIVATE HOUSING:</b>	Alameda:	Santa Clara	Contra Costa	San Francisco
<b>PRIORITIES</b>	<b>1. Housing Discrimination</b> <b>2. Mobile Homes</b> <b>3. Rent Controlled Housing</b>			
<b>EVICCTIONS: NOTICE ONLY:</b>	<b>Generally NO</b> , Unless eviction is related to Disability/ Reasonable Accommodation Issue	<b>Generally NO</b> , unless: 1. Meritorious housing discrimination claim, particularly involving a disabled tenant [protocols for determining merit to be developed. We will need to sharpen criteria to avoid these cases taking an inordinate percentage of appointments 2. Mobile Home eviction		
<b>EVICCTIONS: COURT PAPERS RECEIVED</b>	<b>NO, UNLESS South or East Alameda County</b> Case <b>AND</b> one or more of the following factors are present: <b>Disabled, LEP, or DV related</b> -ALTERNATIVE RESOURCES AVAILABLE. Refer to EDC, EBCLC	<b>NO, UNLESS Fair Housing defense available</b>  Pro per assistance available	<b>NO, UNLESS Richmond resident OR non-Richmond resident who is LEP or disabled</b> *CCC Courthouse Clinic	<b>NO, not even for brief service: ALTERNATIVE RESOURCES AVAILABLE</b> Refer to EDC
<b>PVT HSG DEFAULT EVICTION</b>	<b>NO</b> . Brief service (stays of execution) or stay packet only *CCC has stay, set aside and relief from forfeiture packets *AL has stay and set aside packets			<b>NO, not even for brief service: ALTERNATIVE RESOURCES AVAILABLE</b> Refer to EDC for stays
<b>PVT HSG DEFAULT EVICTION: MOTION TO SET ASIDE</b>	<b>NO</b> . -Pro per stay and set aside packets only – client can pick up at Local Office	<b>NO. Make appt for BRIEF SERVICE only (Stays of Execution)</b> 1. Resources permitting, office may consider pro per Motion to Vacate Default 2. Resources permitting, office may consider representing in a meritorious case *CCC – in possession and 7+ days b4 stay expires; underlying meritorious case; Disabled or senior or misled by LL which caused default		<b>NO, not even for brief service: ALTERNATIVE RESOURCES AVAILABLE</b> Refer to HAP and Access Center for Motions to Vacate/MSAs ok to refer to JFK clinic 510.647.2060

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PVT HSG DEFAULT EVICTION: AFTER STIPULATION	<b>NO</b> (Treat like any other default eviction, e.g., refer for stay of execution only)  <b>UNLESS <u>BayLegal</u> negotiated the stipulation, in which case, Make appointment</b>			
PRIVATE HSG DISCRIMINATION	<b>YES. Make appointment if [criteria to be determined]</b>			
TRANSITIONAL HSG & SHELTER EVICTIONS	<b>YES. Make appointment</b>			
MOBILE HOME EVICTIONS	<b>YES. Make appointment</b> *AL and CCC – if owner is being evicted then it's a priority; if tenant being evicted then treat as pvt hsg eviction			

**D. Non-Eviction or Termination Cases in which Extended Representation Can be Considered (In general, cases not involving an immediate threat to tenancy, loss of subsidized housing, or housing discrimination have a lower priority)**

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SECURITY DEPOSITS	<b>NO.</b> Mail brochure and/or refer to small claims court unless the issue is intertwined with inability to use sec. 8 voucher in another unit or endangers continued occupancy of public/subsidized housing			
DISPUTES OVER DAMAGES	<b>NO,</b> unless the issue is intertwined with inability to use sec. 8 voucher in another unit or endangers continued occupancy of public/subsidized housing			
REPAIRS/HEALTH & SAFETY	<b>NO.</b> Develop community education packet/refer to Small Claims Court & Code Inspector, etc. STEALTH to offices if facts warrant			
ILLEGAL LOCKOUTS/UTILITY SHUT-OFFS	<b>NO. – but STEALTH to Attorney of the Week if:</b> 1. Case is not resolved at LAL 2. Eviction or Utility Shut-off is imminent (written notice), or 3. Eviction or Utility Shut-off occurred w/in 7 days Otherwise, refer to bar association or pvt attorney	<b>YES. Make emergency appointment if:</b> 1. Case is not resolved at LAL 2. Eviction or Utility Shut-off is imminent, or 3. Eviction or Utility Shut-off occurred w/in 7 days Otherwise, refer to bar association or private attorney  *SF – First email or call JE if you need an emergency appt; if JE not available call ACE or PM; If available you can also schedule on tues pm calendar or stealth but email first. *CCC – stealth		



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BREAKING LEASES EARLY	NO Note: if the reason for breaking the lease is related to housing discrimination or habitability, STEALTH if the facts warrant		
LATE FEES	NO		
FAIR HOUSING/HSG DISCRIMINATION	YES, although priorities (e.g., mental health disability) will have to be developed		
DECREASE IN SERVICES, e.g., Rent Control Board Petition or Appeal for Rent Reduction	Oakland only. YES, if priority 1 or 2 health and safety violations (see rent board list), verbal notice given to LL ,and inadequate response. Only private hsg. FC 105.	NO. STEALTH IF WARRANTED (e.g., multiple eligible clients affected, particularly notorious landlord, particularly egregious conditions)	
MEDIATION AT RENT BOARD HEARING, e.g., rent increase (Initial Petition, Hrg, Appeal)	Oakland only. YES, if cl received notice of increase in rent and increase is above CPI. If 1 notice, then only schedule if within 60 days of receipt of notice. If multiple notices, then schedule. Also schedule cases in which no RAP notice was issued to tenant If at appeal stage, schedule if client can be scheduled within 19 days of date of mailing of written decision. Date of mailing can be found on proof of service attached to written decision. Email hsg group as emergency case if 10+ days since date of mailing. Only private hsg. FC 105.	NO. STEALTH IF WARRANTED (e.g., multiple eligible clients affected, particularly notorious landlord, particularly egregious conditions)	
MISCELLANEOUS PUBLIC OR SUBSIDIZED HOUSING ISSUES			
GRIEVANCE	YES. Make appointment if client is a current PHA tenant (to be seen by law clerks or volunteers, if possible)		
APPLICATION FOR TRANSFER	YES. Make appointment if case involves safety or reasonable accommodation		
DENIAL OF APPLICATION	YES. Make appointment		
RECERTIFICATION OF ELIGIBILITY OR CHANGE IN AMT OF	YES – Schedule ONLY if ALL of the following apply:	YES, IF the issue involves reasonable accommodation or a significant rent increase. Otherwise, advice only NOTE: LAL to monitor situations where this comes up for 6 months and will make CAG	

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<b>RENT SUBSIDY</b>	<p>1. cl has received a written notice of substantial rent increase from PHA as a result of recert.</p> <p>2. Cl has requested an informal hearing yet has not obtained resolution of issue</p> <p><b>For all other cases:</b> advise of appropriate remedies (e.g., grievance, informal meeting, informal hearing), and STEALTH if client may not be able to implement the advice given because of disability or LEP</p>	recommendation
<b>§8 ILLEGAL “SIDE RENT” ISSUES</b>	<b>YES.</b>	<b>YES.</b> Make appointment
<b>§8 BUILDING: LATE FEES</b>	<b>NO</b>	
<b>§8 BUILDING: NOTICES BY MANAGEMENT COMPANY</b>	<b>NO.</b> STEALTH if harassing or otherwise fishy	
<b>§8 RENT RE-DETERMINATION</b>	<p><b>YES,</b> IF the issue involves reasonable accommodation or a significant rent increase. Otherwise, advice only</p> <p>*SF – any rent related public housing issue should be referred to 415-354-6353 (Baylegal SF public housing hotline)</p> <p>*CCC – schedule if rent s/b decreased more than 10% b/c of decrease in income</p>	
<b>§8 APPLICATION DENIALS AND OTHER ADMISSION PROBLEMS</b>	<b>YES.</b> Make appointment	

**Note: Factors Justifying Regional Office Modifications of Program Case Acceptance Guidelines**

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1. Availability of other legal resources
2. Size of the county (e.g., office geographical priorities in larger counties) and number of jurisdictions covered (e.g., multiple housing authorities and courts)
3. Type of housing in the county